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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No.76 of 2002**

**APPELLANT** Amulya Sirdar @ Amulya Sardar, aged about 60 years, S/o Bhim Sardar, Resident of P.V. No.122, Thana Pankhajur, District Kanker.

**Versus**

**RESPONDENT** State of Chhattisgarh, Through the District Magistrate, Kanker.

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**Appearance:**

Ms. Minu Banerjee, counsel for the appellant.
Shri D.K. Gwalre, Additional Public Prosecutor for the State.

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**ORAL JUDGMENT**
**(16.05.2007)**

**SUNIL KUMAR SINHA, J**

Heard.

This appeal is directed against the judgment of conviction and order of sentence dated 22.11.2001 passed in Sessions Trial No.20/2001 by the Second Additional Sessions Judge (FTC), Kanker (C.G.), whereby, the said Court after holding the appellant guilty of the offence punishable under Section 376 (2) (f) of IPC, sentenced him to undergo R.I. for 10 years and to pay a fine of Rs.5000/-, in default of payment of fine to further undergo R.I. for 20 months.

The brief facts are that the appellant and prosecutrix are the residents of same locality. The appellant is the neighbour of the prosecutrix. The case of the prosecution is that on the date of incident i.e. on 7/9/2000, mother and father of the prosecutrix were not present in the house. She was in her house along with her elder sister namely Ganga and another younger sister namely

Pratibha. The appellant came to their house at about 12:00 in the noon and sat on the chair, which was kept in veranda. Thereafter, he called the prosecutrix towards him and after putting off the underwear of the prosecutrix and also after putting off his own lower clothes; he took the prosecutrix on his lap and ultimately, penetrated his penis into the vagina of the prosecutrix. The blood started oozing out from her vagina, which ultimately stained the underwear of the prosecutrix, which she put on after the sexual intercourse. Thereafter, the appellant went away from the place of occurrence. When, after sometime, mother and father of the prosecutrix returned from the fields, the prosecutrix narrated the story to them, a Panchayat was convened in the night and ultimately, in the intervening night of 7th & 8th of September 2000, FIR was lodged by mother of the prosecutrix namely Gulapi Gayin (PW-2) vide Ex.-P/1 in the concerned Police Station. After lodging of the report, the prosecutrix was sent for medical examination under Ex.-P/6, where Dr. (Smt.) Kiranlata Thakur examined her and prepared a report under Ex.P/6-A. According to her report, the girl was of a tender age, her secondary sexual characters were not developed, auxiliary and pubic hairs and the breasts were also not developed. She noticed one abrasion on the left cheek of the prosecutrix. On internal examination, she found her hymen to be recently ruptured with congestion present at the margins of ruptured hymen and slight bleeding was also present. Her vagina was hardly admitting little finger that too up to the tips. She opined that the girl may have been subjected to sexual intercourse. Thereafter, accused was arrested on 10/09/2000 and he was also medically examined by Dr. Devendra Turre (PW-7), who gave his opinion that he was physically able to perform sexual intercourse. He prepared his report vide Ex.P/8. During the course of investigation, school admission register was also seized under Ex.-P/4 and copy of said register was obtained vide Ex.-P/7. According to the entries in the school register, date of birth of the prosecutrix was 7/7/92 and she was admitted to Class-I on

28/7/95. Her name was entered at Sl. No.305 in the aforesaid register.

After completion of the usual investigation, charge sheet was filed in the Court of concerned Magistrate, from where, the matter was committed to the Court of Sessions and was received on transfer by the II Additional Sessions Judge (FTC), Kanker (C.G.), who ultimately, concluded the trial and passed the impugned judgment dated 22/11/2001. It is against this judgment of conviction and order of sentence awarded to the appellant, the appellant has preferred this appeal.

Conviction of the appellant is based upon the testimony of the prosecutrix namely Jamuna Gayin (PW-1), which is duly supported by the evidence of her mother namely Gulapi Gayin (PW-2) and Dr.(Smt.) Kiranlata Thakur (PW-4).

Learned counsel for the appellant submits that there are many discrepancies in the evidence of the prosecutrix, therefore, no reliance can be placed on her evidence and conviction based upon such evidence of the prosecutrix should be set aside.

On the other hand, learned counsel for the State supports the judgment of conviction and order of sentence passed by the Sessions Court and prays for dismissal of the appeal.

I have heard learned counsel for the parties at length and have also perused the records of the Sessions Trial.

So far as age of the prosecutrix is concerned, there are two sets of evidence in this regard. The first one is the evidence of her mother namely Gulapi Gayin (PW-2), who deposed vide para 2 that her daughter namely Jamuna Gayin was aged about 8 years. She was studying in Class II in a Primary School situated in P.V. No.122, Pankhajur. She was younger than the other daughter namely Ganga, who was studying in Class IV in the same school. She deposed that Jamuna was 2 years younger than Ganga. The second set of evidence is the entries in the school records showing the date of birth. In this regard, the prosecution has examined the

Head Master of the School namely Shri D.S. Bhaskar (PW-5). He has deposed that he is working as a Head Master in the said School since 1986. According to the admission register of the school (Ex.-P/7), at Sl. No.305, there is an entry pertaining to the admission of the prosecutrix, according to which, her date of birth is 27/7/92. The evidence of mother as also the entry of school admission register have not been assailed by the defence and evidence of these two witnesses on the point of age is intact. Moreover, medical report of the Doctor Dr.(Smt.) Kiranlata Thakur would show that on the date of examination i.e. on 08/09/2000, her secondary sexual characters were not developed , auxiliary and pubic hairs and the breasts were also not developed. She had clinically observed her age to be 7 years in her report Ex.P/6-A. On the date of examination of the prosecutrix in the Sessions Court i.e. on 24/4/2001, the Court has assessed her age as 8 years. The two kinds of evidence pertaining to the age of the prosecutrix and observations made by the lady Doctor contained in the medical report and further by the Sessions court would prove that in fact, the prosecutrix was about 7-8 years on the date of incident and the Court below has rightly determined so vide para 9 of the judgment.

So far as evidence regarding incident is concerned, prosecutrix (PW-1) deposed before the Court that on the fateful day, when she was playing with her younger sister namely Pratibha in the veranda of their house, this appellant came over there and after putting off her underwear, he also put off his own lower clothes and thereafter, he penetrated his penis into her vagina, on which, she felt severe pain and red-black substance started oozing out from her vagina. She also deposed that at that time, the appellant had gagged her mouth. When the said incident had occurred, her elder sister – Ganga was sleeping in the house and she woke up, when the appellant left the place of occurrence. As soon as Ganga woke up, the prosecutrix narrated the story to her. Thereafter, when her mother came back to the house after

about half an hour, her younger sister namely Pratibha narrated the story to her, on which, mother made enquiries from the prosecutrix and she disclosed the above facts to the mother. In the cross-examination, though some minor deviations are there pertaining to causing of injury by one Ganesh Ram, but ultimately, evidence of the prosecutrix remains intact on the point that she was subjected to forceful sexual intercourse by the appellant on the said date and time, due to which, she received injuries on her private parts. She has denied the suggestions given by the defence counsel that the appellant has not penetrated his penis into her private part.

The mother namely Gulapin Gayin (PW-2) also deposed vide para 3 of her evidence that at about 2:00 p.m. on the said date, when she returned back from the fields, her daughter told her that the appellant had came to their house and after putting off her underwear, he committed sexual intercourse against her. Thereafter at about 3:00 p.m., her husband came to the house and she narrated the story to him and then, a Panchayat was convened in the village as to what should be done and thereafter, a report was lodged in the police station in the night itself.

So far as the above evidence is concerned, nothing has been brought by the defence in her cross-examination to discredit her testimony.

Dr. (Smt.) Kiranlata Thakur, who had examined the prosecutrix on 08/09/2000 proved her report as Ex.P/6 A. As stated above, according to her, there was an abrasion on the left cheek of the prosecutrix and except that there was no external injury. However, on internal examination, she found her hymen to be recently ruptured with congestion present at the margins of ruptured hymen and slight bleeding was also present.

Learned counsel for the appellant argues on the minor discrepancies praying for discarding the testimony of the prosecutrix.

It is a settled principle of law that overmuch importance cannot be given to minor discrepancies. Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses, therefore, cannot be annexed with undue importance. More so when the all important "probabilities-factor" echoes in favour of the version narrated by the witnesses. Please see ***Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat AIR 1983 S.C. 753***.

It is equally well settled that when the version of the prosecutrix or a witness inspires confidence of the Court and the Court feels it proper to depend on testimony of the prosecutrix, a conviction can well be based on the sole testimony of the prosecutrix needing no corroboration thereof. The principle pertaining to testimony of a solitary witness equally applies in case of a rape victim that neither the Legislature nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. Observing these principles, in the matter of ***Namdeo vs. State of Maharashtra 2007 AIR SCW 1835***, the Apex Court said that it is, therefore, open to a competent Court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The Court ruled the bald contention that no conviction can be recorded in case of a solitary eye-witness, as in the said case, therefore, has no force and must be negatived. It is also to be remembered that the status of the victim of a rape case is equivalent to the status of an injured witness and the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex offender is entitled to

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great weight, absence of corroboration notwithstanding. Please see ***Bharwada Bhoginbhai Hirjibhai – Vs – State of Gujarat, AIR 1983 SC 753*** referred by the Apex court in the matter of ***State of Tamil Nadu –Vs.- Ravi @ Nehru 2006 (7) SBR 264*** while dealing with a case of rape victim, aged about 4-5 years.

If we examine the evidence of the prosecutrix, in light of the principles referred to above, it would appear that her evidence is intact on the point that on the date of incident, this appellant visited her house and taking advantage of the situation that mother and father of the girl were not present, he committed forceful sexual intercourse against the prosecutrix, due to which, she received injuries on her private parts. There is also no dispute that the prosecutrix was below 12 years of age on the date of incident and the trial Court committed no error of law in holding that the appellant committed an offence punishable under Section 376 (2) (f) of IPC. Not only this, her evidence is corroborated by the evidence of mother as well as by the evidence of Doctor.

There is no merit in the appeal and the same is dismissed.

Conviction and sentence awarded by the Sessions Court are hereby confirmed.

**Sd/-**
**Sunil Kumar Sinha**
**Judge**

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